Exhibit 2

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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IN RE: NEXIUM (ESOMEPRAZOLE) MDL No. 2409

MAGNESIUM) ANTITRUST LITIGATION)

) Case No.

This document relates to:) 1:12-MD-02409-WGY

All End-Payor Class Actions)

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VIDEOTAPED DEPOSITION OF

THOMAS G. McGUIRE, Ph.D., VOLUME II

Tuesday, February 11, 2014, 8:44 a.m.

Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.

One Financial Center

Boston, Massachusetts 02111

------ Reporter: Kimberly A. Smith, CRR, RDR ------

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Q. Well, you were performing an analysis of a hypothetical negotiation, correct?

A. Yes.

Q. And there are two sides to a hypothetical negotiation, correct?

A. Yes.

Q. Who were the two sides in the Apotex case?

A. Well, it would have been Apotex and AstraZeneca.

Q. So wouldn't it be relevant to know what Apotex was saying in that hypothetical negotiation?

A. Well, it might have been. But the hypothetical negotiation that I'm concerned with, only one of those parties was in that hypothetical negotiation. And that's AstraZeneca. So I focused on AstraZeneca.

Q. So sitting here today, you don't have any idea what royalty percentage Apotex argued for in the dispute with AstraZeneca?

A. I don't remember.

Q. So you don't know whether it was 7 percent or 50 percent?

MR. RADICE: Objection.

You can answer.

THE WITNESS: I don't remember.

BY MR. SCHOEN:

Q. But you think you did know at some point in time?

A. I don't remember that either. Sorry.

Q. What royalty did AstraZeneca actually recover from Apotex as a percentage of profits in its patent infringement case?

A. 50 percent.

Q. So your testimony here is that if the Prilosec case had gone to trial, you believe that Teva, the fifth generic entrant, would have been required to pay AstraZeneca a royalty equal to 60 percent of Teva's profits, even though Apotex, the fourth generic entrant, was only required to pay a royalty equal to 50 percent of its profits?

MR. RADICE: Objection.

You can answer.

THE WITNESS: Well, I wouldn't phrase it that way. You know, what I was analyzing was a

that would have an outcome. And that's it. And those are the numbers I came up with. And how then they are, you know, followed on, that's -- that's something different.

Q. Well, you did something more than conduct a Georgia-Pacific analysis, didn't you?

MR. RADICE: Objection.

THE WITNESS: I conducted a Georgia-Pacific analysis. And then in Table 2 and 3, I used those numbers to compare it to $9 million.

BY MR. SCHOEN:

Q. Was that something the court asked you to do?

MR. RADICE: Objection.

You can answer.

THE WITNESS: My understanding is I was asked to conduct a reasonable royalty analysis, which I did. And this I regarded to be an informative conclusion from that analysis.

BY MR. SCHOEN:

Q. Well, you understand that in the Apotex case, the court conducted a reasonable royalty

analysis under the Georgia-Pacific factors?

A. Yes.

Q. And in the Apotex case, you said that the court arrived at the conclusion that, based on the application of that Georgia-Pacific analysis, that a reasonable royalty in that case was equal to 50 percent of Apotex's profits, correct?

A. Yes.

Q. Yet your conclusion here is that for Teva, a reasonable royalty would be 10 percent higher than the reasonable royalty found in the Apotex case?

A. Yes.

Q. Even though Teva was the fifth generic entrant and Apotex was the fourth generic entrant?

A. Yes.

Q. Tell me everything that you rely on for your opinion that AstraZeneca would have recovered a 10 percent higher royalty from Teva, the fifth entrant, than it did from Apotex, the fourth entrant for the same drug.

A. Well, this is -- would be a rehearsal of my report. And I'm not sure if you would like me to go

paragraph by paragraph through that and repeat that. I'm happy to do that if that's what you're asking.

MR. SCHMIDTLEIN: Your report didn't ask -- didn't do an analysis of why the award is higher than Apotex --

MR. RADICE: Are you going to question one at a time or . . .

MR. SCHMIDTLEIN: -- so don't give us that. Answer the question.

MR. WEXLER: Hey, hey, hey. Watch your tone, please.

THE WITNESS: I guess I'm not sure I understand what the -- the, sort of -- the point of the question is.

BY MR. SCHOEN:

Q. Can you show me where in your report, sir, it explains why you believe that AstraZeneca would have recovered a 60 percent royalty from Teva when it recovered only a 50 percent royalty from Apotex.

A. Okay.

MR. RADICE: Objection. Asked and answered.

You can answer to the extent you can.

THE WITNESS: Well, I -- in my report, I considered a range of comparables that included the Apotex comparison, which was at the low end of the other comparables.

And factoring in -- and if you would like to -- you know, we can go through them piece by piece if you want -- but factoring in not only the low end but the other comparables, some of which were, you know, business arrangements by AstraZeneca involving the same drugs, then -- and those were higher than 50 percent.

So considering these factors together, it made sense to me that the reasonable royalty would be 60 percent.

BY MR. SCHOEN:

Q. The agreements you were just referencing were authorized generic distribution agreements; is that correct?

MR. RADICE: Objection.

You can answer.

THE WITNESS: Well, they're the

agreements referenced in my report.

BY MR. SCHOEN:

Q. Well, you said there were higher numbers and you mentioned 80 percent and 90 percent. The 80 percent and 90 percent numbers in your report relate to what you described as authorized generic distribution agreements, correct?

A. Well, these particular agreements, the Ranbaxy agreement, the Plendil agreement, those were also authorized generics and also the, kind of the industry standard reference, which I'm sure you know what I'm talking about, that also referred to authorized generics.

Q. Well, when you said that for the same drug, that there were other arrangements that had an 80 percent figure, by that, you're referring to the authorized generic distribution agreement between AstraZeneca and Ranbaxy for Prilosec; is that correct?

A. That's one of them, yes.

Q. Well, to the extent that that's relevant to a Georgia-Pacific analysis, that would have been

relevant to a Georgia-Pacific analysis for Apotex and AstraZeneca as well because that dispute also concerned Prilosec; isn't that right?

MR. RADICE: Objection.

THE WITNESS: So you're asking now about a Georgia-Pacific analysis, AstraZeneca and Apotex --

BY MR. SCHOEN:

Q. Yes.

A. -- and what might be relevant for that.

Q. Um-hum.

A. Well, that I didn't do, so I'm a little reluctant to, on the spot here, you know, go back and do another Georgia-Pacific analysis.

Q. What is the possible reason that the Georgia-Pacific analysis would come out any different for Teva than it would for Apotex, where you're talking about the same exact drug, Prilosec, and the only difference is that Teva entered the market as the next generic entrant nine months later?

A. Well, I did one Georgia-Pacific analysis. I didn't do two Georgia-Pacific analyses. So I can't tell you why this one would have been exactly that

one. I did mine according to what I regarded to be the request, and I considered relevant factors.

And they were -- they sort of fell across the range. And I made my judgment. And it was 60 percent.

Q. Is there anything that you rely on for your opinion that AstraZeneca would have recovered a 10 percent higher royalty from Teva than it did from Apotex, other than the statements that are set forth in your report?

A. Well, the statements in my report contain the analyses I relied upon. I think that answers your question.

Q. Are you opining that AstraZeneca definitely would have recovered more from Teva than it did from Apotex?

A. It's my opinion that the reasonable royalty was 60 percent.

Q. Is that your opinion to a reasonable degree of certainty?

A. I would say yes.

MR. RADICE: Objection.

You can answer.

BY MR. SCHOEN:

Q. Would you agree with me that it's possible that someone applying a Georgia-Pacific reasonable royalty analysis could come to the conclusion that a royalty of 50 percent would be appropriate for Teva, 50 percent of its profits?

A. It could be.

MR. RADICE: Objection.

You can answer.

THE WITNESS: It could be. I'm sorry.

BY MR. SCHOEN:

Q. It could be?

A. I just wanted to make sure the court reporter heard my answer.

Q. Would you agree with me that a court or jury applying a Georgia-Pacific analysis could have come to the conclusion that a royalty that was 40 percent of Teva's profits would have been reasonable in the case between Teva and AstraZeneca relating to Prilosec?

MR. RADICE: Objection.

other.

BY MR. SCHOEN:

Q. Can you identify for me, sir, one reason why you believe Teva would warrant a higher royalty percentage of its profits than Apotex?

A. Because of the other comparables I used in my report that were much higher than 50 percent.

Q. And why weren't those comparables relevant to an analysis of the royalty that Apotex should pay?

MR. RADICE: Objection.

You can answer.

THE WITNESS: I -- They may have been. I don't know what the Apotex analysis consisted of.

BY MR. SCHOEN:

Q. Do you agree with me that two experts applying a Georgia-Pacific analysis could reasonably come to very different conclusions about the percentage royalty that's appropriate in a particular case?

A. That happens.

Q. Don't you say later in your report that 50 percent could be a reasonable royalty rate here?

MR. RADICE: Objection.

THE WITNESS: Well, I do an analysis of 50 percent, as you know, in Tables 2 and 3. I think it's informative for the court to see that.

BY MR. SCHOEN:

Q. Why did you use 50 percent?

A. I used that as a lower bound.

Q. Why didn't you use 40 percent?

A. Because I chose 50 percent as a lower bound. I thought that was the right lower bound.

Q. Do you believe that 50 percent could be a reasonable royalty in this case of somebody looking at the Georgia-Pacific factors and determining a reasonable royalty for Teva in the Prilosec matter, could they determine that 50 percent is a reasonable royalty?

MR. RADICE: Objection.

You can answer.

THE WITNESS: Well, you know, I did my analysis, which I determined what I thought the reasonable royalty would be. I know just factually, other cases, people come to different opinions.

speculations and ones that I don't. And this seems unlikely to me.

BY MR. SCHOEN:

Q. Again, sir, my question isn't whether you think it's likely or unlikely. My question is, do you agree with me that it's possible that, absent the settlement, that AstraZeneca would have recovered from Teva a lower royalty rate as a percentage of profits than the 50 percent it recovered from Apotex?

A. Possible, but unlikely.

Q. You're saying it's unlikely. Can you put a percentage on that?

MR. RADICE: Objection.

THE WITNESS: Not really.

BY MR. SCHOEN:

Q. Did you do anything to quantify the possibility that AstraZeneca would have recovered from Teva a royalty rate lower than 60 percent had the case gone to trial instead of settling?

A. By quantifying the possibility, you mean did I estimate the likelihood of various potential

outcomes? No, I didn't do that. If I understood your question correctly.

Q. So that was not part of your analysis: to estimate the likelihood of various potential outcomes?

A. No, it was not part of my analysis.

Q. In paragraph 2 of -- I'm sorry -- in paragraph 3 of your report, the second bullet point -- and this is in Exhibit 4 -- you say that if you apply your 60 percent to your profit estimate for Teva and apply interest, you get royalty damages of $33.1 million; is that correct?

A. I see that, yes.

Q. You're not suggesting that a $33.1 million damage award was the only possible outcome of the Prilosec case had it gone to trial?

MR. RADICE: Objection.

You can answer.

THE WITNESS: This -- this was my conclusion of a reasonable royalty analysis. That's -- that's what I did.

BY MR. SCHOEN:

with precision in every case, could you?

A. I didn't see that as my role.

Q. Because you can't do that. Nobody could do that, could they?

A. Well, that's not my role. I'm -- I had a discrete assignment here to do a reasonable royalty analysis, not to forecast likelihood of legal outcomes.

Q. And you made your best estimate?

A. I did.

Q. Your Table 2 in your report shows -- also makes an estimate of damages at a 90 percent reasonable royalty rate; is that correct?

A. Yes. I believe so. Let me just catch up to you here. Yes.

Q. Do you believe that 90 percent is a possible reasonable royalty that someone could find, conducting a Georgia-Pacific analysis relating to the Teva Prilosec matter?

A. I considered that to be a reasonable upper bound here.

Q. Tell me everything you rely on to support

A. I can't.

Q. Can you identify for me a single patent infringement case in which a court awarded royalty damages equal to 80 percent of the infringer's profits?

A. I can't do that either.

Q. 70 percent?

A. I can't do that either.

Q. 60 percent?

A. Sorry.

Q. You can't do that either for 60 percent?

A. That's right.

Q. Now, you say that 60 percent of Teva's profits is now your best estimate of what Teva should have had to pay in the Prilosec case absent a settlement; is that correct?

A. Yes.

Q. In your first report in this case, you said 80 percent was your best estimate; is that correct?

MR. RADICE: Objection.

THE WITNESS: No. That was a different -- a different analysis.

the next exhibit, please.

(McGuire Exhibit 6 was marked for identification.)

BY MR. SCHOEN:

Q. Do you have Exhibit 6 in front of you?

A. I do.

Q. Do you recognize Exhibit 6 as Judge Cote's decision in the Apotex case --

A. Yes.

Q. -- in which it awarded royalty damages equal to 50 percent of Apotex's profits on its infringing Prilosec sales?

A. Yes, I do.

Q. Could you direct your attention to page 122 of that decision, please.

And if you direct your attention specifically to the first full paragraph on page 122, do you see where Judge Cote said that "the settlement agreement between Teva and Astra in 2010 resulted in a payment to Astra of the equivalent of 54 percent of Teva's profits from its infringing sales"?

A. I see that, yes.

Q. So do you agree with me that under the definition of "profits" that the Apotex court was using, the $9 million that Teva paid in the Prilosec settlement was equal to 54 percent of Teva's profits?

A. Well, I agree that the sentence says 54 percent. And I'm sure the court did the math right. The base here included Teva plus Impax profits. And the court chose to take out the Impax part of that, so . . .

Q. Impax was the party that was manufacturing the Prilosec for Teva, correct?

A. Yes.

Q. So under the definition of "profits" that the Apotex court was using, it thought it appropriate to deduct that cost in computing profits before arriving at the determination that a 50 percent royalty as a percentage of profits was appropriate, correct?

MR. RADICE: Objection.

You can answer.

THE WITNESS: Well, I'm not really prepared to interpret what the judge was deciding

here. I can read it, but I -- I don't want to interpret it.

BY MR. SCHOEN:

Q. Well, you just said that she did -- that the way it was computed was because the payments to Apotex were deducted as a cost before arriving -- I'm sorry -- the payments to Impax were deducted as a cost before arriving at the profit numbers, correct?

A. I believe that's where this 54 percent came from.

Q. So the Apotex court thought that was the appropriate way to compute profits in this circumstance?

MR. RADICE: Objection.

You can answer.

THE WITNESS: I'm sure it was put in here for a reason. I don't -- I really don't want to interpret the appropriateness of what the court thought they were doing here.

BY MR. SCHOEN:

Q. But your analysis uses a different

definition of "profits" than what the Apotex court did?

A. Well, the -- it includes the full profits of the Impax/Teva parties. The definition is still net sales minus cost. But the -- how much of that you include is different, yes.

Q. So in your view, when you compute a reasonable royalty, it's appropriate to apply the percentage royalty that you arrive at to the profits of both Teva and Impax, while the Apotex court took a narrower view of profits and said that the payments to Impax out of those profits should be deducted before you apply the royalty percentage; is that a fair statement?

MR. RADICE: Objection.

You can answer.

THE WITNESS: Well, I did what I did. And I don't think you characterize what I did correctly. And I'm just reading here. And I believe that's what -- where the 54 percent came from.

BY MR. SCHOEN:

MR. SCHOEN: Do you mind reading the question back.

(Record read as requested.)

THE WITNESS: Yes. I'm not sure.

Can I untether a second and get a cup of coffee? We don't have to take a break.

MR. RADICE: Let's go off the record.

Can we go off the record?

MR. SCHOEN: Yes.

THE VIDEOGRAPHER: The time is 9:39. We're off the record.

(Recess at 9:40 a.m.,

resumed at 9:49 a.m.)

THE VIDEOGRAPHER: We are back on the record. The time is 9:49.

BY MR. SCHOEN:

Q. Dr. McGuire, I'd like to put in front of you what's previously been marked as Exhibit 3 to your deposition.

MR. RADICE: This is the one marked last time, right?

MR. SCHOEN: Yes.

BY MR. SCHOEN:

Q. Do you have Exhibit 3 in front of you?

A. I do, yes.

Q. And you cite Exhibit 3 as one of the documents you relied on or cited in your supplemental report that's Exhibit 4?

A. Yes.

Q. You cite it in Footnote 68 of your report?

A. I'm sure you're correct, but let me just confirm.

Okay. Yes.

Q. You say that you are unsure when this report was created or what numbers were used to generate it; is that correct?

A. That's correct.

Q. Did you review Mr. Green's report in this case?

A. I did.

Q. Did you review the portion of his report where he explained how this report was generated and what Jamie Berlanska of Teva told him about the report?

A. Yes, I did.

Q. Do you know what Jamie Berlanska's position is at Teva?

A. He's a financial officer. I forget his exact position.

Q. She.

A. She.

Q. She's the comptroller.

A. Sorry.

Q. And do you have any basis to disagree with the description that Ms. Berlanska provided to Mr. Green about how this report was generated?

A. Well, I just -- I don't mean to impugn the comptroller of Teva. It was just unclear to me what all the elements in the document consisted of.

Q. Well, you say you weren't -- "It's unclear to me how this document was created."

But didn't Mr. Green explain in the report that it was created out of reports that tie to Teva's audited financial statements?

A. Yes, he did.

Q. And do you have any basis to disagree with

that statement?

A. No.

Q. Now, you say that -- In paragraph 54, you say it's unclear whether this document was created contemporaneously or not.

Do you see that statement?

A. Yes.

Q. Is it your view that contemporaneous records are more accurate or reliable?

A. They can be.

Q. Do you know whether Teva provided quarterly contemporaneous reports to Impax concerning Teva's Prilosec's sales?

A. I'm not aware.

Q. You don't know one way or the other?

MR. RADICE: Objection.

You can answer.

THE WITNESS: I don't remember seeing them.

BY MR. SCHOEN:

Q. Did you review the entirety of Mr. Green's report in this case?

A. I believe I did, yes.

(McGuire Exhibit 7 was marked for identification.)

BY MR. SCHOEN:

Q. Do you have Exhibit 7 in front of you?

A. I do, yes.

Q. I'd like to direct your attention to Exhibit E of Exhibit 7. And you recognize Exhibit 7 as Mr. Green's report in this case, which you reviewed before preparing your reports here, correct?

A. Yes.

Q. Do you recall looking at Exhibit E to Mr. Green's report?

A. Yes.

Q. Does this refresh your recollection that Teva provided quarterly reports to Impax about Teva's gross and net sales of Prilosec?

A. Yes, it does.

Q. Did you review those reports?

A. I reviewed this report. I don't think I reviewed the actual Teva reports.

Q. Did you ask for them?

A. No.

Q. So did you undertake any analysis to compare how the numbers in Teva's quarterly reports regarding its sales and profits for Prilosec compared to what was in either Exhibit 3 or Exhibit 5?

A. Exhibit 3. Sorry. I'm just kind of catching back to you here. I believe I did. There was some confirmation of the numbers I used for my basis in relation to a later report that was, you know, with -- you know, they were close. So I did do some confirmation. I don't recall all the details of it.

Q. You have no basis to disagree with the summary of the royalty reports that's in Exhibit E to Mr. Green's report, Exhibit 7, do you?

A. No.

Q. And do you see that Exhibit E indicates that Teva's net sales totaled $38.4 million relating to Prilosec?

A. Yes, I see that.

BY MR. SCHOEN:

Q. Correct?

A. That's correct.

Q. Yet you still think it's reasonable to assume your $43 million extrapolation, even though the documents show that the actual net sales were lower than the profits that you're assuming?

MR. RADICE: Objection.

You can answer.

THE WITNESS: Well, I did think I was using reasonable numbers to base my profit estimates, yes.

BY MR. SCHOEN:

Q. When did the -- when did the settlement between Teva and AstraZeneca occur relating to Prilosec?

A. That was 2008.

Q. Are you sure about that?

A. No, wait a minute. No, I'm not sure about that.

Q. Does January 2010 refresh your recollection?

A. Yes, 2010. Yes.

Q. You agree that's the correct date?

A. Yes.

Q. So as of 2010, would Teva and AstraZeneca have had any reason to have to make extrapolations about what Teva's actual Prilosec sales were through 2007?

A. Repeat the question for me.

Q. As of 2010, would Teva and AstraZeneca have had any reason to have to make extrapolations about what Teva's actual Prilosec sales were through 2007?

A. I see. Presumably, they would have had information about that.

Q. You agree with me that if you have actual data, that it's always better to use the actual data than an extrapolation?

A. I agree with that.

Q. If you direct your attention back to your supplemental report, which is Exhibit 4, in paragraph 59 of your report, you talk about how you arrived at your estimates of what you call an effective payment from AstraZeneca to Teva?

A. Yes, I see that.

the costs incurred to that point were already $8 million, wouldn't that be relevant to what you would extrapolate the future costs to be?

A. Not necessarily. As they -- No, not necessarily.

Q. So just to be clear, you didn't undertake any inquiry at all as to what AstraZeneca's actual legal costs were in the Prilosec case prior to the settlement?

A. They were sunk costs.

Q. I'm not asking whether you think --

A. And so --

Q. -- they're sunk costs.

A. And so I did not investigate them for the reason that they had already been incurred.

Q. Did you undertake any inquiry as to what legal costs AstraZeneca was projecting for the remainder of the Prilosec case at the time it settled?

A. No, I did not.

Q. You didn't think that was relevant to your analysis either?

A. I had a reasonable estimate of that amount.

Q. How did you have a reasonable estimate of that amount?

MR. RADICE: Objection.

You can answer.

THE WITNESS: The basis that we've already discussed.

BY MR. SCHOEN:

Q. But you don't know specifically what AstraZeneca was estimating they would be? You're just looking at what you say the mean costs are for this type of litigation?

A. I was looking at the material I had to make what I thought was a reasonable estimate.

Q. And my question is, sir, did you make any inquiry to see whether there was any other material you could gather to better inform this estimate?

A. I thought the material that I had access to was sufficient to -- for my purposes.

Q. Do you know how much AstraZeneca incurred in legal fees in its case against Apotex with regard to the damages phase of that case?

A. I don't know.

Q. Did you think that might be relevant for your analysis here?

A. Well, again, it's a division in time and it's only future costs that are the relevant one for this consideration. And so a total that includes some mix of all the costs that would have been incurred, it's hard to know where in that process this -- you know, you would need to stop and consider what costs might be going forward.

Q. Apotex was found to infringe in the same trial as Teva, correct?

A. I believe that's true, yes.

Q. You don't know?

A. I believe that's true.

Q. Do you know whether the cases were remanded for damages proceedings at the same time?

MR. RADICE: Objection.

You can answer.

THE WITNESS: I don't know.

BY MR. SCHOEN:

Q. So you don't think it would be relevant to

BY MR. SCHOEN:

Q. But your reasonable royalty analysis that's reflected in Exhibit 4, that's done? There's no work that's ongoing with respect to that?

MR. RADICE: Objection.

THE WITNESS: Not so far as I know.

BY MR. SCHOEN:

Q. Are you aware of any errors in Exhibit 4?

A. No.

Q. Did anybody check the report for errors before it went out?

A. I -- Yes, I believe they did.

Q. Who?

A. This -- you know, standard procedure at GMA would be to check the report. I don't know the person. Don't know who did it.

Q. Have you ever personally had any involvement in the negotiation of a patent license?

A. Not personally.

Q. Or in some other capacity?

A. What do you mean?

Q. I mean, have you ever had any involvement

confidentiality order and it could extend all the way to your engagement itself, then I would instruct you not to the answer the question. If you know that it's not, please answer.

THE WITNESS: I certainly signed a confidentiality order. I believe it's confidential. I'm happy to do whatever I need to do to have that clarified and follow up. But I'm reluctant to disclose the parties at this time.

BY MR. SCHOEN:

Q. Please identify for me every case other than the present Nexium dispute in which you have been asked to perform a reasonable royalty analysis applying the Georgia-Pacific factors.

A. That's the case I identified in my report, which is the Lakeland case.

Q. That's Lakeland Medical vs. Astellas?

A. Yes.

Q. And that's the only prior time before your work in this case that you've attempted to perform a Georgia-Pacific reasonable royalty analysis?

A. Yes. That's correct.

Q. Are you relying on your experience in the Lakeland case as part of the basis for your opinions here?

A. No.

Q. Did the Lakeland case go to trial?

A. No.

Q. So you have never testified in court as an expert on reasonable royalty damages; is that correct?

A. That's correct.

Q. Was the Lakeland case a patent infringement case?

A. It was an antitrust case, which --

Q. So you --

A. Sorry. -- which involved the but-for world in which a patent would have been licensed.

Q. So you have never testified at trial or at deposition as a damages expert in a patent infringement case; is that correct?

A. That's correct.

Q. The analysis that you performed in the Lakeland case was in support of plaintiffs' motion

for class certification; is that correct?

A. I don't think so. I'm -- I'm not sure what the legal position of that report was.

Q. You don't recall submitting a report in support of the plaintiffs' motion for class certification in the Lakeland case?

A. I'd have to look and see what the title was. But if that's what it says, that's what it says.

Q. Do you recall that the court denied class certification in the Lakeland case?

A. I do recall that.

Q. And that after that, the case pretty quickly ended?

A. I believe that's correct.

Q. And you said the Lakeland case was an antitrust matter. Did it involve tie-in claims? Is that correct?

A. Yes.

Q. You opined in that case that if Astellas were required by the antitrust laws to offer a standalone license for the product at issue, it would have charged zero dollars because the cost of

administering a license program would exceed the license fees that Astellas could collect; is that a fair statement?

A. That was the -- a part of my report was regarding the standalone license that Astellas would have been able to charge, and I came to a zero.

Q. Did you analyze all 15 Georgia-Pacific factors to reach that conclusion?

A. I considered all 15 factors, yes.

Q. How long was your report in that case?

A. Pretty long. I've been --

Q. Did Astellas agree with your position in that case?

A. No, I don't think they did.

Q. Do you recall that Astellas had an expert that said Astellas would have claimed a royalty of much higher than zero if it had to offer a standalone license?

A. I think that's correct.

Q. And why did you reject that contention?

A. Oh, gosh.

MR. RADICE: Again, as with the last

that's listed here is testimony on September 20, 2013, right?

A. That's right.

Q. Do you know what happened in the Andrx case?

A. I believe the Andrx case resolved with AstraZeneca receiving no damages.

Q. And there was a judgment entered in the Andrx case to that effect. Is that your recollection?

A. I believe so, yes.

Q. Did you see that judgment?

A. Well, if it's not listed here, then I didn't see it.

Q. You didn't think what happened in the Andrx case was relevant to your analysis so that it should be discussed in your report and included in your list of materials relied on?

MR. RADICE: Objection.

You can answer.

THE WITNESS: Well, I listed the materials I relied on. And my report contains the information I thought was informative to me.

question.

Q. You didn't -- You're not aware of any other case involving a reasonable royalty where somebody looked at an authorized -- authorized generic distribution agreement to determine a license royalty rate?

A. I'm not aware of any other case, no.

Q. And, in fact, neither the Andrx court nor the Apotex court looked at any authorized generic distribution agreements in assessing what a reasonable royalty would be for Prilosec in those cases?

MR. RADICE: Objection.

THE WITNESS: I'm not sure what they would have looked at.

BY MR. SCHMIDTLEIN:

Q. Well, didn't you look hard at what those courts looked at? Didn't you think that was important to examine?

A. Well, I did. I read the opinion.

Q. And you didn't see any evidence that those courts looked at authorized generic distribution

legal costs that were saved by settling the patent litigation involved in the case at issue, which in this case would be the AstraZeneca/Teva Nexium litigation, correct?

A. Okay. I believe that's correct, yes.

Q. You did that in connection with your Ranbaxy analysis. When you did your Ranbaxy analysis, you analyzed what were the saved litigation costs that AstraZeneca saved from the -- when it settled the Ranbaxy Nexium case, right?

A. Yes. So far so good.

Q. But when you did your analysis in -- of the Prilosec analysis here and you're determining what the alleged payment was, you look only at the saved litigation expenses from the Prilosec litigation, correct?

A. Let me see how I refer to them there.

Well, I simply refer to avoid litigation costs and use the $2 million as an estimate of what they would have saved in -- by conducting the settlement. I don't think I qualify it there.

Q. So is it -- is the $2 million in avoided

costs from the Prilosec litigation or the Nexium litigation?

MR. RADICE: Objection.

You can answer.

THE WITNESS: Well, it's just avoided litigation costs as an estimate of what they would have saved had they not settled [sic].

BY MR. SCHMIDTLEIN:

Q. So which is it? It's your analysis. You tell me. Is the $2 million from the Teva Prilosec litigation or the Teva Nexium litigation?

MR. RADICE: Objection.

You can answer.

THE WITNESS: Well, I believe it's the estimate of the settlement of the two cases that occurred at that time.

BY MR. SCHMIDTLEIN:

Q. So now you're saying it's $2 million for both cases? Really?

MR. WEXLER: Objection.

THE WITNESS: I believe what that estimate is, is the saved litigation costs once they

settled matters with Teva.

BY MR. SCHMIDTLEIN:

Q. From what cases?

A. Well, it would be from both cases.

Q. And where did you come up with $2 million in savings for both cases?

A. Well, I was treating them as a -- as kind of a unified effort.

Q. So you cite to an FTC study that talks about the litigation costs for one case, and then you extrapolate that and say that's the same litigation costs for two separate cases? Is that what you're doing?

A. Well, I used the $2 million as an estimate of the future litigation costs here.

Q. You don't know what future litigation costs you were referring to in your report, do you?

MR. RADICE: Objection.

THE WITNESS: No, that's not true.

BY MR. SCHMIDTLEIN:

Q. Sitting here right now, you're not sure what that $2 million refers to, whether it was the

Prilosec patent case, the Nexium patent case, or both?

MR. RADICE: Objection.

THE WITNESS: No, that's not true. I think to bring this -- this analysis back into the context of the earlier analysis, which is the purpose of the -- adding Tables 2 and 3 here, then this is what AstraZeneca would have saved had it settled with Teva, an estimate of that.

BY MR. SCHMIDTLEIN:

Q. You're saying that $2 million is an estimate of what AstraZeneca would have saved from having to continue litigating through trial the Prilosec case and separately litigating through trial the Nexium case; is that right?

A. That's -- that's the $2 million estimate.

Q. So -- and you agree that the right way to look at that is to look at the saved litigation costs for both cases, right?

A. From AstraZeneca's point of view, the -- the payment above litigation costs would be the 9 plus the estimate of the saved litigation.

Q. From both cases?

A. From both cases.

Q. Now, you make reference to the Andrx offer to settle for 70 percent of profits; is that right?

A. Yes.

Q. That's one of the comparables you looked at to come up with the 60 percent royalty rate?

A. Yes.

Q. And during your deposition testimony, I've also heard you refer to that as 70-50 earlier today; is that right?

A. Yes.

Q. And I didn't see the 50 percent in your report anywhere. I only saw the 70 percent.

Can you explain what you're now discussing with respect to 50 percent.

A. Well, there was a 70 percent offer by Andrx, and I'm not sure it was part of the same offer or in subsequent offers, there was a 50 percent that was also offered by them for other products.

Q. Explain to me exactly what the 70 percent offer comprised.

A. Comprised?

Q. Yes. Tell me exactly what that -- the settlement that included the 70 percent offer, can you describe that settlement for me, that settlement proposal.

A. It was by Andrx after they had been found to infringe, a proposal to settle the litigation, which would involve, I believe, a license for Andrx to sell the authorized generic, I think, 40-milligram version of Prilosec.

Q. Anything else that was part of that settlement proposal?

A. I'm not sure it was that proposal or other proposals. There were either other components or other proposals also made by Andrx.

Q. Tell me about any other settlement proposals you understand were made by Andrx.

A. The -- Another component or proposal involved selling of other strengths, I think lower strengths, for 50 percent reasonable royalty.

Q. Anything else?

A. Not that I recall.

Q. Do you remember what the lower strengths were?

A. You mean the milligrams?

Q. Yes.

A. I believe 10 and 20, but I'm not 100 percent sure.

Q. Now, with respect to the first offer on the 40 milligram, that's the 70 percent royalty that was offered; is that right?

A. Yes.

Q. And I believe you said -- make sure I get this right -- you said, "It was by Andrx after they had been found to infringe, a proposal to settle the litigation, which would involve, I believe, a license for Andrx to sell the authorized generic, I think, 40-milligram version of Prilosec."

Am I reading that right?

A. I believe so, yes.

Q. When you say "a license to sell an authorized generic," what do you mean by that?

A. That in this -- it probably may be better described by "distribute the authorized generic."

Q. Well, what Andrx was proposing there was a license that would allow them to continue manufacturing the drug, correct?

A. Well, my understanding of it, I answered the earlier question.

Q. Well, you're talking about distribution of an authorized generic drug. The Andrx -- Andrx wasn't an authorized generic drug distributor, right?

MR. RADICE: Objection.

THE WITNESS: I'm not sure I understand what you're getting at.

BY MR. SCHMIDTLEIN:

Q. An authorized generic distribution agreement involves the branded company manufacturing the product, the generic company buying the product from the brand, and distributing it for the brand, correct?

A. Okay.

Q. Andrx was never an authorized generic distributor, correct?

A. Well, I may have misunder- -- misremembered that.

Q. Andrx had actually manufactured the product. That's why they were getting sued, right?

A. That was the infringement, yes.

Q. And Andrx's settlement proposal was that it be licensed so that it could continue to manufacture the product, correct?

A. I would have to go back and refresh myself on that.

Q. At the time -- the 70 percent offer that they made was -- was with respect to future sales of the product, not past sales, correct?

A. Well, I think they hadn't sold. So it would be sales, all of which would have been in the future.

Q. And as part of that settlement proposal, Andrx also was requesting a release for any damages in connection with the product that they had manufactured but not yet sold, correct?

A. That's my understanding.

Q. And would you agree with me that that would tend to reduce the effective 70 percent rate to a lesser number because Andrx was also requesting

value for the release of any damages on the manufactured product?

A. Well, I don't know. I interpret this as in the context of a reasonable royalty analysis, in which here is an offer of potential willing parties and one person makes an initial offer.

Q. But part of that offer also included, forgive all of my liability in connection with this product that I have manufactured and that AstraZeneca was seeking damages on, correct?

A. Well, that's true. But I think that's typical of an ex-post reasonable royalty analysis after someone might have infringed. The same with Teva.

Q. The hypothetical negotiation that Georgia-Pacific talks about talks about going forward -- a royalty on the product sold. It's not royalty on product sold, plus forgive me for a bunch of damages for something else, right?

A. Well, a reasonable royalty analysis is as if the willing parties are coming together prior to an infringement and deciding what they would agree

on.

Q. Right. And the 70 percent number here involves more than that. It involves a forgiveness for other liability, correct?

A. Well, I think you're trying to introduce a distinction that I don't see as special here. That in a reasonable royalty analysis feeding into damages, it would also settle whatever -- it would settle the case. And this would also be a proposal to settle the case.

Q. But it would be a proposal to settle a case based on a reasonable royalty hypothetical license for the product that was actually the infringing product sold, right?

A. Right.

Q. And a going-forward payment or a going-forward royalty potentially if they -- if they negotiated a potential license going forward?

A. Well, maybe or maybe not.

Q. Right. But here, they were asking for something more than the 70 percent. They were asking for -- We'll pay you 70 percent, but then you

also have to forgive us for the liability for our past manufactured product?

A. It was a proposal to settle the case, as I understood.

Q. The -- this -- the 70 percent was the royalty proposed on 40-milligram, correct?

A. I believe so.

Q. And you said the 50 percent was on 10- to 20-milligram, correct?

A. I believe so, yes.

Q. What Prilosec dosage had Teva sold and was subject to damages for in its litigation against AstraZeneca?

A. I think the lower doses.

Q. So the right number to look at for Andrx is 50 percent, not 70 percent, right?

MR. RADICE: Objection.

THE WITNESS: No. I don't agree with that.

BY MR. SCHMIDTLEIN:

Q. Why? Why do you look at -- why do you look at -- isn't it -- why do you look at a license for